

The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. See 86 Ill. Adm. Code 130.1951. (This is a GIL.)

February 23, 2001

Dear Xxxxx:

This letter is in response to your letter dated January 25, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

The purpose of this letter is to request a General Information Letter, pursuant to 2 Ill. Admin. Code 1200.120, from the Illinois Department of Revenue (hereafter, 'the Department') on the issue presented below.

Statement of Facts

Vendor is a qualified retailer located in an Illinois Enterprise Zone. Vendor has contracted to purchase four new Combustion Gas Turbines and Generators (hereafter collectively 'CTGs') for resale. Vendor has contracted to resell the CTGs to a buyer for a building project within the Enterprise Zone, an Illinois enterprise zone (hereafter, 'the enterprise zone').

The CTGs are designed for the location in which they will operate. For example, the CTGs have been engineered to account for seismic requirements, temperature range, humidity range, wind loads, and air quality. Each turbine weighs 293,500 pounds (146.75 tons). Each generator weighs 319,000 pounds (159.50 tons).

At the buyer's building site, the real estate will be excavated for new foundations, aboveground and underground conduits, piping for both water and natural gas, cabling, grounding grid, and new roads. New concrete and steel will be used to build the foundation in the real estate. The preparation of the site, the construction of the foundations, and the construction of the CTGs and related materials will take almost one year.

Each CTG, at a combined weight of 612,500 pounds (306.25 tons), will be bolted to their new foundation using specially-designed anchor bolts and then connected to the new power electric system. The housing around the CTGs will consist of pre-fabricated metal wall material and roof panels. The housing wall panels are bolted directly to the foundation. The power electric connection will be made using the new interconnecting conduits, wiring, and cable tray. The gas and water pipes, of which some are underground, will be attached to concrete foundations and integrated into the facility using permanent connections. In other words, the CTGs will be anchored to the building and connected to the electric system.

The following is a list of the significant materials for which the buyer has contracted with Vendor:

- Four Combustion Gas Turbines and Generators.
- Electrical equipment, including transformers, aboveground and underground electrical conduit, cabling, and wiring.
- Piping for both water and natural gas.
- Grounding gird.
- Anchor bolts.
- Concrete and steel for the foundations and housing.
- Stacks.
- Inlet fogging system.
- Accessory base.

The materials listed above will be referred to herein as 'the CTGs and related materials.'

Ruling Requested

The issue in this PLR is whether the CTGs and related materials qualify as building materials for incorporation into real estate in an enterprise zone by remodeling, rehabilitation, or new construction under 86 Ill.Admin.Code 130.1951.

Analysis and Authority

The Illinois Retailers' Occupation Tax Act imposes a tax on persons engaged in the business of making retail sales of tangible personal property. 35 ILCS 120/2. In accordance with the Act, the tax is measured by a seller's gross receipts. 35 ILCS 120/2-10. A retailer whose place of business is located within a county or municipality which has established an enterprise zone, and who makes sales of building materials to be incorporated into real estate in that enterprise zone by remodeling, rehabilitation or new construction, may deduct receipts from such sales in the calculation of taxable gross receipts. 35 ILCS 120/5k.

Under the applicable regulation, 'in order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate.' 86 Ill.Admin.Code 130.1951(a)(7).

The regulations provide examples of qualifying building materials:

- Common building materials such as lumber, bricks, cement, windows, doors, insulation, roofing materials and sheet metal can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(A).
- Plumbing systems and components thereof such as bathtubs, lavatories, sinks, faucets, garbage disposals, water pumps, water heaters, water softeners and water pipes can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(B).
- Electrical systems and components thereof such as wiring, outlets and light fixtures which are physically incorporated into the real estate can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(D).
- Built-in appliances such as refrigerators, stoves, ovens and trash compactors which are physically incorporated into the real estate can qualify for the deduction. 86 Ill.Admin.Code 130.1951(a)(7)(G).

As stated above, Vendor has contracted with the buyer for the sale of the CTGs and related materials and Vendor is located within the enterprise zone. The issue in this PLR is whether the CTGs and related materials qualify as building materials.

First, under the regulations, the concrete and steel for the foundations and housing, as well as the anchor bolts and grounding gird, should qualify as building materials. 86 Ill.Admin.Code 130.1951(a)(7)(A). In addition, the accessory base, which is a steel structure that bolts directly to the concrete foundation and is grouted to ensure uniform bearing of load, and the stacks, which are the exhaust stacks that make up part of the overall exhaust system and are bolted to the concrete foundation and grouted, should qualify as building materials. Id.

Second, under the regulations, electrical systems and equipment, including transformers, aboveground and underground electrical conduit, cabling, and the wiring should qualify as building materials. 86 Ill.Admin.Code 130.1951(a)(7)(D). In addition, the inlet fogging system, which is the integrated cooling system that connects to the turbines and generators, should qualify as a building material. Id. The inlet fogging system is bolted to the concrete foundation and grouted.

Third, under the regulations, the piping for both water and natural gas should qualify as building materials. 86 Ill.Admin.Code 130.1951(a)(7)(B).

Fourth, under the regulations, the CTGs should qualify as building materials. Like the appliances described in 86 Ill.Admin.Code 130.1951(a)(7)(G), the CTGs will be physically incorporated into real estate because they become part of a component of a building's electrical system. The CTGs will be anchored with bolts to the housing and along with the related materials will then become part of the complex's power electric system. From this perspective, the CTGs are like free-standing appliances, such as stoves, that become part of a component of a building's electrical system. Accordingly, the CTGs should qualify as non-taxable building materials under the regulation.

In addition, four important facts demonstrate that the CTGs and related materials will be physically incorporated into real estate.

1. The CTGs location, which requires specific seismic and atmospheric modifications to the CTGs, foundation, and housing.
2. The preparation and construction of the site, including the concrete and steel foundations, will require almost one year to complete.
3. The anchoring of the CTGs to the housing and foundation using specially designed anchor bolts.
4. The immense weight of the CTGs-each CTG weighs a combined 612,500 pounds, or 306.25 tons.

These facts show that the CTGs are indeed heavy appliances and are not intended to move from place to place. Rather, they will be physically incorporated into real estate in an enterprise zone. Thus, the CTGs and related materials should qualify as non-taxable building materials for incorporation into real estate in an enterprise zone.

In recent Private Letter Rulings for taxpayers with facts substantially similar to Vendor's, the Department ruled that the taxpayers' natural gas fired turbines, generators, and related materials qualify as building materials. See Private Letter Rulings ST 00-0026-PLR, November 3, 2000; ST 00-0025-PLR, October 19, 2000; and ST 00-0013-PLR, July 7, 2000.

We respectfully request that the Department issue a ruling stating that the CTGs and related materials qualify as building materials for purposes of the deduction provided in 35 ILCS 120/5k.

Thank you in advance for your prompt attention to this matter. Please feel free to call if you have any questions or need any additional information.

Enclosed is a copy of 86 Ill. Adm. Code 130.1951 concerning Enterprise Zones. The enterprise zone building materials exemption allows retailers located in the municipality or unincorporated area of a county that established an enterprise zone to make tax-free sales of building materials that will be incorporated into real estate located in the enterprise zone. You have asked whether the items set forth in your letter are building materials as defined in the regulations. Section 130.1951(a) states, in part, as follows:

- 7) In order to qualify for the deduction, the materials being purchased must be building materials. That is, they must be purchased for physical incorporation into real estate.

In general, building and equipment foundations consisting of concrete and rebar qualify as building materials, as do anchor bolts, electrical conduit and piping and other fixtures embedded in the foundations qualify as building materials. Combustion Turbines that are permanently affixed to the foundation and hardwired into an electrical system generally qualify as building materials. The Department has ruled that under circumstances where stacks, inlet fogging systems and accessory bases are permanently affixed to realty, they qualify as building materials. It is unclear from your letter whether these items will be permanently affixed.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

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Associate Counsel

MAJ:msk
Enc.